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HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:3592 of 1995

DATED:20-03-2006

Between:

B.Daniel Savarkar

..... PETITIONER

AND

1. The Regional Joint Director of School Education,

Kakinada, East Godavari District and 2 others.

.....RESPONDENTS

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ORAL ORDER:

The relief sought for in this writ petition is for a direction to the respondents to pay the petitioner's salary from 01-09-1992 to 04-05-1994 and to direct the respondents to continue him as an attender and regularize his services.

2. The facts in brief are that the petitioner was appointed as an attender on 01-09-1992 on temporary basis in the vacancy caused by the promotion of Sri T.Ramana Mohan Rao, on monthly salary of Rs.740/-. The petitioner would allege that on 04-05-1994, the third respondent manhandled him and threw him out from the school and thereby his heart complaint got aggravated and he was admitted in the hospital to undergo treatment for his heart disease. The petitioner would complain that the action of the respondents in not taking him back into service and not paying him salary is arbitrary and illegal. The petitioner would contend that since he had worked for two years in the school, the third respondent ought to have regularized his services and paid him regular salary, and instead, steps were being taken to fill up the vacancy of the attender with some other candidates.

3. A counter affidavit is filed by the second respondent, wherein it is stated that since the petitioner's appointment is contrary to the provisions of G.O.Ms.No.524, dated 20-12-1988, the question of any grant being given by the department would not arise. It is stated that no prior permission is obtained from the second respondent, no paper advertisement was given and no selection committee was constituted. The correspondent himself issued appointment order taking an application from the petitioner who is his close relative without following the procedure and that the proposal was sent for approval after a period of seven months as against the stipulated time of one month. During the interregnum, pursuant to the interim orders of this Court, the case of B.Ramesh was considered for appointment on compassionate grounds.

4. The third respondent, in its counter-affidavit, would state that the petitioner had abandoned service from May, 1994. It is further stated that at the time of his initial appointment, he produced only the Xerox copy of the SSC marks list and he did not produce any original pass memo and since his

appointment was subject to approval of the first and second respondents and since no approval was obtained, the appointment is illegal and is liable to be set aside. Reference is also made to complaints regarding the petitioner's mis-behaviour with school girls and that he was also indulging in eve-teasing and on the said complaints when his explanation was called for, the petitioner absconded from duty. It is stated that the petitioner's appointment was purely temporary and subject to the approval of the first and second respondents and since his appointment had not been approved, the third respondent was not in a position to continue the petitioner in service or to pay him salary.

5. As is clear from the counter-affidavit filed on behalf of the second respondent the very appointment of the petitioner is contrary to the rules in G.O.Ms.No.524, dated 20-12-1988. Such an illegal appointment confers no right on the petitioner that his services should be regularized or that the first and second respondents should provide grant in aid and appoint him in the aided post. As held by the Supreme Court in **State of Assam v. Ajit Kumar Sarma,** no mandamus can be issued, at the behest of an employee, to the Government to provide grant in aid. In so far as the petitioner's grievance that his services were terminated and he was not permitted to joint duty is concerned, questions as to whether he had voluntarily abandoned or whether he was manhandled and thrown out are all disputed questions of fact which this Court would not examine in proceedings under Article 226 of the Constitution of India.

6. The writ petition is accordingly dismissed. This order shall not, however, preclude the petitioner from availing, other remedies, if any, available to him. No order as to costs.

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20th March, 2006

SKM